

198551

SLOVER & LOFTUS

ATTORNEYS AT LAW

1224 SEVENTEENTH STREET, N. W.

WASHINGTON, D. C. 20036

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
DONALD G. AVERY
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERGOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE

May 16, 2000



TELEPHONE:
(202) 347-7170

FAX:
(202) 347-3619

WRITER'S E-MAIL:

cam@sloverandloftus.com

BY HAND DELIVERY

Honorable Vernon L. Williams
Surface Transportation Board
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, N.W.
Washington, D.C. 20423-0001

MAY 16 2000

Part of
Public Record

Re: Ex Parte No. 582 (Sub-No. 1),
Major Rail Consolidation Procedures

Dear Mr. Williams:

Enclosed for filing in the above-referenced proceeding are the original and 25 copies of the Comments of Salt River Project Agricultural Improvement and Power District. Also enclosed is a 3.5-inch diskette containing the text of the Comments in WordPerfect format.

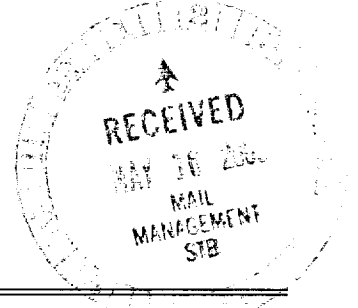
Please acknowledge receipt of the enclosed by stamping and returning to our messenger the enclosed duplicate of this letter.

Sincerely,

Christopher A. Mills

CAM/mfw
Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



MAJOR RAIL CONSOLIDATION
PROCEDURES

)
) Ex Parte No. 582 (Sub-No. 1)
)
)

EX-118-713
Office of the Secretary

MAY 16 2000

COMMENTS OF SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT

Part of
Public Record

Salt River Project Agricultural Improvement and Power District ("SRP") submits the following comments with respect to the Board's Advance Notice of Proposed Rulemaking ("ANPR") in this proceeding served March 31, 2000.

BACKGROUND

SRP is an agricultural improvement district organized under the laws of Arizona, and a political subdivision of that state. It provides electricity to residential, commercial, industrial and agricultural power users in a 2,900 square-mile service area in Arizona that includes much of the Phoenix metropolitan area.

SRP is part of a coalition of western coal shippers and shipper associations led by the Western Coal Traffic League (the "Coal Shippers") that is submitting comments in response to the Board's Advance Notice of Proposed Rulemaking ("ANPR") in this proceeding. SRP endorses the positions and the proposed rule amendments set forth in the Coal Shippers' Comments. SRP is

submitting these separate Comments in its own name to provide the Board with specific information concerning its own experience in the aftermath of the BN/Santa Fe Merger and to emphasize the need for rule changes that would require merging rail carriers to adhere to pre-merger service levels and live up to their pre-merger promises with respect to post-merger service levels.

SERVICE PROBLEMS RESULTING FROM RAIL MERGERS

SRP owns and operates the Coronado Generating Station ("Coronado"), a large coal-fired power plant located near St. Johns in northeastern Arizona that consumes in excess of 2.5 million tons of coal annually. Coronado Station is served exclusively by The Burlington Northern and Santa Fe Railway Company ("BNSF"). Most of the coal consumed at Coronado is produced at mines in New Mexico that are also served exclusively by BNSF. BNSF or its predecessor, The Atchison, Topeka and Santa Fe Railway Company ("Santa Fe"), has transported all of the coal consumed at Coronado since the plant began operation in the late 1970's.

SRP's interest in this proceeding arises primarily from its experience in receiving rail deliveries of coal before and after the BN/Santa Fe merger in 1995. SRP's experience following the BN/Santa Fe merger causes it to be very concerned that further consolidations in the North American railroad industry will significantly impair the rail service SRP needs to assure a

steady, dependable and economically competitive supply of coal for the generation of electricity at Coronado.

Until the BN/Santa Fe merger, SRP generally received responsive, attentive service from the Santa Fe from both an operational and a customer service standpoint. After the merger, SRP became less important to the new (and much larger) railroad. BNSF appeared to be concerned primarily with its coal traffic from the Powder River Basin, which produces coal in far larger volumes than the New Mexico mines that supply Coronado Station, and with growing its intermodal traffic (much of which uses the same BNSF main line used by SRP coal trains).

In the fall of 1995 (shortly after the merger), SRP began to experience rail service problems. BNSF apparently was having trouble melding its two predecessor railroads together, and in particular was unable to provide adequate locomotives and train crews to move Coronado coal trains on a regular and predictable basis.

BNSF's service gradually improved in 1996. However, SRP coal trains are still often delayed due to the increasingly heavy intermodal and other freight traffic that moves over the same high-density main line used by its trains. BNSF no longer dedicates locomotives to Coronado service, as Santa Fe did, and whenever coal deliveries are suspended for even a brief period (e.g., due to a scheduled plant maintenance outage) BNSF seems to have difficulty finding locomotives for SRP trains. SRP no

longer has the kind of regular, dependable service it had before the BN/Santa Fe merger, and rarely knows when (or if) a loaded train is going to arrive at Coronado. This causes difficulties in scheduling the plant personnel needed to unload trains as well as increased costs.

In public statements by its Chairman over the past several months, BNSF has made much of the quality of its service, particularly in comparison to that of the Union Pacific. BNSF also declared, before its proposed consolidation with the Canadian National was put on hold, that it would guarantee its customers as good or better service after implementation of that proposal than they have today. These kinds of pronouncements sound good on paper. However, when SRP asked BNSF during recent Coronado contract negotiations for concrete service commitments with specific penalties for failure to perform, BNSF rejected this concept out of hand. BNSF later indicated that it would reconsider its position with respect to service commitments -- but only in return for a substantial price increase.¹

SRP believes that the kinds of problems it experienced in the wake of the BN/Santa Fe merger will only get worse if another round of major rail consolidations occurs. The major Class 1 carriers have already become so big that many of their

¹ The negotiations for a new contract ultimately failed, resulting in pending litigation between BNSF and SRP over SRP's right to terminate the parties' existing contract.

customers get lost in the shuffle. Their market power is such that they can dictate service terms to most of their customers while making promises in touting their mergers before the Board that later go unfulfilled. The time has come for the Board to take meaningful steps to protect captive rail shippers from the potential harmful effects of future major rail consolidations.

RULE CHANGES REQUESTED

SRP fully supports the amendments to the Board's rules for considering rail major consolidations set forth in the joint Comments being submitted by the Coal Shippers coalition. In particular, SRP supports the adoption of a rule under which the Board will impose a condition to its approval of all future Class 1 rail mergers and consolidations requiring the merger applicants to reimburse shippers for any damages incurred as a result of degradations in rail service resulting from the transaction.

This proposal is one of the few realistic means of enforcing the representations that merging railroads commonly make concerning the benefits their proposed consolidation will have with respect to rail service. It would provide a strong incentive for the railroads to honor the statements made in their applications concerning the public benefits that will result from consolidation transactions.

If the Board is unwilling to adopt the condition related to post-merger service failures proposed by the Coal

Shippers, then as an alternative SRP proposes that the Board adopt a modified condition, which contains the following three elements:

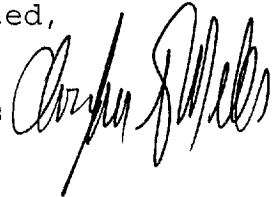
1. Merger applicants will be required to provide service to their captive shippers for a period of three years following consummation of the transaction that is no worse than the level of service provided during the three-year period prior to consummation of the transaction.
2. If merger applicants make any representations in their application or in soliciting support for their proposal that the level of rail service to be provided post-transaction will be better than the level of service provided pre-transaction, the applicants will be required to honor such representations for a period of three years following consummation of the transaction.
3. A presumption will be established that any significant deterioration in service that occurs during the three-year post-transaction period resulted from the transaction. Unless the applicants can show that the deterioration was caused by the customer or by force majeure events, the Board will order the merger applicants to permit the shipper to obtain alternative rail service. Such alternative rail service may take one of the forms depending on the circumstances: bottleneck rate relief (without regard to whether the shipper has a contract covering all or any part of transportation in issue) or trackage rights in favor of an alternative service provider up to a maximum distance of 100 miles.

SRP believes that such a condition would still provide merging railroads with a strong incentive to maintain pre-merger service levels or honor their pre-merger representations concerning post-merger service levels. At a minimum, this kind of rule

change is necessary to help assure that future major rail consolidations do not result in inadequate service to those members of the public who must ship by rail, and who would not otherwise have the ability to counter the market power (or indifference) of the few remaining huge Class 1 railroads.

Respectfully submitted,

C. Michael Loftus
Christopher A. Mills
Daniel M. Jaffe
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036
(202) 347-7170



OF COUNSEL:

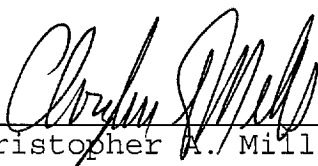
Slover & Loftus
1224 Seventeenth Street, N.W.
Washington, D.C. 20036

Dated: May 16, 2000

Attorneys for Salt River Project
Agricultural Improvement and
Power District

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2000, I caused a copy of the foregoing Comments to be served on all persons designated as a Party of Record or Member of Congress in the Board's decisions in this proceeding served April 28 and May 10, 2000, by first-class United States Mail.



Christopher A. Mills